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# Department of Revenue

OFFICE of the Bd. of Rev.

STATION Madras.

Mis. No. 1926

P. 1735/37

Dated 15-6-37

GP —

DESP... 18 JUN 1937

Pages in the file

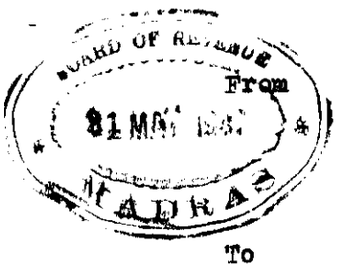
(SUBJECT.)

Stamp Act — (South Kanara) — Adjudication — Crop hypothecation deed — Duty — 'Mortgage with possession' or Simple Mortgage' Orders passed

P1735

L.Dis. 2471-37. South Kanara Collector's Office,

Mangalore, dated 29 - 5 - 1937.




From

T. A. Varghese, Esquire, I.C.S.,

Ag. Collector of South Kanara.

To

The Secretary,

Board of Revenue,

M a d r a s.

Sir,

Stamp Act - adjudication - Crop Hypothecation deed reference under Section 56 (2) of the Madras Stamp Act.

P.55 (S.M.) of 1948

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I submit for the Board's decision, reference No.2158-37-D dated 22-5-37 of the Revenue Divisional Officer, Mangalore with all its enclosures. pp. 3-4 c.

2. I agree with the views of the Revenue Divisional Officer expressed in his above reference.

For Collector. 29.5.

29.5.37

Ref.No.2158-37-D.

Revenue Divisional Office,
M a n g a l o r e,
Camp: Bajape, dated: 22-5-1937.

From

M. R. Ry. M. S. Jagannayakulu Nayudu Garu, B.A.,
Revenue Divisional Officer,
Mangalore Division.

24-11-37 PH

COLLECTOR'S OFFICE SOUTH CANARA 25 MAY 1937

To

The Secretary,
Board of Revenue, Madras.

Through

The Collector of
South Kanara.

S i r,

STAMP ACT - Adjudication - Crop Hypothecation Deed - Application under Section 31 - Reference under Section 56(2) of the Act.

Messrs. Peirce Leslie & Co., Ltd., Mangalore, had ap-plied to me for adjudication as to the proper stamp duty payable on "Crop Hypothecation Deeds" which the company proposed to get executed in the form enclosed to their application. --- This application was disposed of by me in this office proceed-ings D.Dis.No.1693/37 dated 4-5-1937, copy of which is herewith submitted.

2. The company has now applied for adjudication of another form of Hypothecation Deed, similar to the one referred to in para 1, but with a further clause (para 17) added. By this new clause the monies to be advanced by the company are further secured on the proprietors' immoveable properties, -- namely, the estate with all buildings, etc., thereon. The document thus appears to me to be a mortgage deed falling under -- Art. 33 of Schedule I-A.of the Act. The point for considera-

-tion is whether it is chargeable under clause (a) or (b) of Article 33, namely, whether the deed should be treated as a mortgage with possession or without possession. I am of -- opinion that this is a case of mortgage with possession. -- For, if the proprietor pays back the dues, the recitals speak of reconveyance of the estate to the proprietor. If possess--sion was not conveyed to the mortgagee in the first instance, there is no need for reconveyance, when dues are paid. As, however, the matter is not quite free from doubt and the inter--pretation of the document involves a difference of a large -- amount of Stamp Duty and as the company wants to act upon --- this decision as a general rule in stamping the instruments of the kind, I refer the case for the decision of the Board under Section 56(2) of the Act. The form of Hypothecation Deed produced by the company is enclosed.

25.4.37.

Revenue Divisional Officer.

25/5/37

D.Dis.No.1693-37.

Proceedings of the Revenue Divisional Officer, Manga-lore Division, dated: 4th May 1937.

M.R.Ry. M. S. Jagannayakulu Nayudu Garu,B.A.

STAMP ACT - Adjudication - "Crop Hypothecation Deed" Petition under Section 31 of the Act - Orders passed.

Read (1) Letter dated 7-4-1937 from Messrs.Peirce Leslie & Co.,Ltd., Mangalore, received with Collector's N.Dis.No.1681-37, dated 9-4-1937.

(2) This office reference Ref.No.1693-37-D, dated 23-4-1937 to the Company.

(3) Reply letter dated 28-4-1937 from the Company.

(4) Form of "Crop Hypothecation Deed" produced by the Company.

This is an application by Messrs.Peirce Leslie & Co., Ltd., Mangalore, under Section 31(1) of the Stamp Act, for adjudication as to the proper stamp duty payable on Crop Hypo-thecation deeds which the company propose to get executed in the form enclosed to their application. They want also to know what difference it would make to the stamp duty charge-able if the document was unattested.

2. The document has been termed a "Crop Hypothecation Deed". It purports to be a deed of mortgage of the crops of certain estate to secure the amounts to be advanced by the Company to the proprietor of the estate. There are recitals in the document (i) giving a lein to the mortgagee (Company) on the crop then growing and also on all future crops to be grown until all the moneys advanced are fully paid up, and (ii) making it lawful for the Company to enter upon the estate and take possession of the crops and to cultivate, gather, prepare and carry away the same until all the moneys are repaid. The loan secured by the document is thus repayable more than eighteen months from the date of the instrument and the docu-ment is liable to stamp duty under Article 33(b) of Schedule I.A of the Stamp Act, as a Bottomry Bond (No.14) for the amount

secured by the deed.

3. It would make no difference in the stamp duty --- chargeable on the document, if it is unattested.

Sd/M.S.Jagannayakulu,
4-5-1937
Revenue Divisional Officer.

/True copy/

T. Narayan Sinha
Head Clerk, 5.5.37.
Mangalore Divisional Office.

M.E.S./25-5.
Compd. 9/

7 (A.T.)

**DRAFT FOR APPROVAL.** C.F. 16.

| | Date. | Initials. |
|---|---|---|
| When received for fair copying | | |
| When copied | | |
| When examined... | | |
| When signed | | |
| When despatched. | | |

SUBJECT:— Stamp Act — (South Kanara) — Adjudication — Crop Hypothecation deed — Duty — 'Mortgage with possession' or 'Simple Mortgage' — Orders passed

READ AGAIN _____, dated _____ 19____.

p.3-4 cf. READ ALSO:— From the A.D.O., Mangalore, Ref. No. 2158-37-D & 22-5-37 — Q

p.1 cf. No. _____ From the Coll. of South Kanara, No. D.Dis. 2471-37, dated 29-5-1937 — Q

" _____ " _____ " _____ " _____ 19____.

" _____ " _____ " _____ " _____ 19____.

~~Order~~ Mis. ~~Ms.~~ Resolution ~~illegible~~ No. 1926, dated 15—6—1937.

The Bd. is of opinion that the mere fact that land and buildings are offered as additional security for the mortgage debt and that there is a recital in the document of reconveyance of these properties does not mean that possession is given to the mortgagee. Clause 7 of the document reads that "the proprietor will cultivate the estate in a good husband-like manner" and this is a sufficient indication that there is no transfer of possession.

The document should, therefore
be charged to duty under
Art. 33 (b) of Sch. I-A as a Simple p. 178 (S.M.)
Mortgage. ~~without possession~~

To The Coll. of South Kanara
(with a draft deed returned)
Ch. Ref. to the Book

15.6.37

17/6/37

1113

A.J.S.

Note file.

[Stamp Act — (South Kanara) — Adjudication — Crop hypothecation deed — Duty — Referred for Bd's orders.]

P-1735/37

To A.J.S.

pp-3-4 ef

The R.D.O., Mangalore, has referred to the Bd. the question of stamp duty payable on ~~the document~~ a class of documents, a specimen of which is at (K).

~ p-1 K

A perusal of the ~~the~~ skeleton document at (K) is solicited. It has been termed as a "Crop hypothecation deed" whereby messrs. Pierce Leslie & Co., Ltd., agree to advance

2 + 3 on pp 1-3 (K)

certain amounts to the Proprietor of an Estate on ~~the~~ the mortgage of all crops grown or to be grown on the Estate, the mortgagor proprietor ~~holding~~ ~~[illegible]~~ binding himself

cl. 4, p. 5 (K)

to cultivate the crops, gather them and after the usual preparation to deliver the same at the works of the Company.

p. 179 (S.M.) 2 1st 1934

Art. 34 of Sch. I-A has reference to deed of "mortgage of a crop" when the loan is repayable within 18 months from the date of the instrument. The document at (K) does not specify the period within which the loan should be repaid. On the other hand clause 3

of the document on p. 3 (K)' speaks of the assignment of crops growing in every season succeeding the season on which the instrument is executed. There is, therefore, no limitation of period for the repayment of the amounts advanced and the document has, therefore, to be construed as not falling within the scope of Art. 34, Sch. I-A, but as a "mortgage deed" falling under Art. 33 of Sch. I-A. In fact the R.D.O., Mangalore, has previously adjudicated as such on a document similar to (K), but without clause 17 on pp. 17-19 (K) and the Company has not apparently questioned this decision. So much about the applicability or otherwise of Art. 34, Sch. I-A to the document at (K).

Vide Note 2 on p 126 (S.M.)

v p. 178 (S.M.)

pp. 5-6 of

p. 179 (S.M.)

The question that has to be decided next is as to whether the document at (K) is a mortgage with possession or a mortgage without possession, as the stamp duty on the former is double the duty payable on the latter.

Arts. 33 (a) & (b), Sch I-A pp 178 (S.M.)

According to clause 17 of the document, the Proprietor should as further security for the repayment of all moneys advanced & hereafter to be advanced, convey & assign to the Company certain

pp. 17-19 (K)

certain immoveable properties to be specified in the schedule to the document, subject to the proviso for redemption in the event of the proprietor paying the company all monies due to them under the deed. There is a ~~condition~~ reference in clause 17 of the document that the company shall at any time after its dues are satisfied, upon the request & cost of the proprietor reconvey & reassign the immovable properties offered as further security. The R.D.O., Mangalore, is of opinion that because of this provision for reconveyance the document should be considered to be a "mortgage with possession" & with this view the Coll. of South Kanara ~~&~~ agrees.

p.19 (K)

p.4 cf.

p.1 cf.

A document in which the terms used were "grant, convey & assign" was considered not to create any right of possession of property to the mortgagee — Vide Note 15 on p.116 of the Stamp Manual. The point for consideration is whether a provision for reconveyance of the mortgaged property in the document can suggest that the mortgagor has created a right of possession for the mortgagee. It does not appear that a 'reconveyance' deed should be executed ~~to~~ only

mortgaged were in the possession of the mortgagee who should release his right of possession over them by that deed of reconveyance For, the execution of a reconveyance deed has been contemplated in cases where money is advanced by Govt. to their servants for constructing, purchasing or repairing a dwelling house for their own use, is repaid — vide item 73 of the Govt. of India Note on p. 240 of the Stamp Manual. Again when security is offered by Govt. servants for the proper discharge of their official duties, hypothecating immoveable property, the execution of a deed of reconveyance by the Govt. is contemplated — Vide B.S.O. 130(7) & App. XI thereto on pp. 791 & 832-833 of B.S.O. Vol. III (Bk. No. 71).

As to matter under Art. 57 on p. 148 S.M.

'To constitute a deed of mortgage with possession, therefore, there must be specific words in the document which unequivocally indicate that possession is given or directly agreed to be given in the first instance itself — Vide the S.C. judgment embodied in Note introduced by C.S. No. 7 on p. 115 (S.M.) Words to this end are wanting in the document at (K); but the words used in clause 17 are similar to those used in a document referred to in Note 15 on p. 116 of the Stamp Manual The Coll. may perhaps be informed that

pp 17-4 (K)

That the document of (K) should be
P.178(S.H) charged to duty only as under Art. 33(b)
of Sch I-A as a mortgage without possession.

For orders

7.6.37

8.6.37

The mere fact that land & buildings are also mortgaged thereto the deed speaks of reconveyance does not mean that possession is given to the mortgagee. Clause 7 on p. 7 of (K) "the purchaser will enjoy the estate in a good & sustainable manner" is sufficient to show that there is no transfer of possession

The document shd therefore be charged under Art 33(b)

10.6.37

M.3.

charge mortgage without possession.

33(b) applies.

12/6

To A.J.S.

Draft submitted

14.6.37

15.6.37